IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1128 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIRAJIBHAI NANJIBHAI GAMIT - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL - MS SADHANA SAGAR for the Appellant
MR HM PRACHCHHAK, APP, for the respondent-State.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 26/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant came to be convicted for offences punishable under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act by learned Additional Sessions Judge, Surat, Camping at Vyara, by judgment and order dated 15.11.1997 in Sessions Case No.181 of 1995.

2. The case of the prosecution against the appellant is that the appellant caused death of Ramanbhai Radatiyabhai by inflicting a knife blow on his neck, at about 22.00 hours on 17th March, 1995, at Khatibor Faliya of village Dosvada. The deceased and the appellant are neighbours. The deceased was working at Mumbai. A few days prior to 17th March, 1995, there was a quarrel between the appellant and Dinaben, wife of the deceased. The deceased had come home on the occasion of Holi festival and when he was told about the quarrel by Dinaben, he inquired of the appellant as to what dispute did he have with his wife. In response thereto, the appellant allegedly had gone home to bring a knife, came back with a knife and inflicted the injury on neck of the deceased. On sustaining the injury, the deceased ran a few feet and fell down. The appellant ran away with the knife. Soniben, mother of the

deceased, lodged a First Information Report and, on that basis, offence came to be registered and investigated. The Investigating Agency found sufficient material against the appellant and, therefore, filed charge sheet in the Court of learned Judicial Magistrate, First Class, at Vyara. As the offences were triable by Sessions Court, the case was committed to the Sessions Court, where it came to registered as Sessions Case No.181 of 1995.

2.1 Charges were framed against the appellant at Exh.8. The appellant pleaded not guilty to the charge and claimed to be tried. The appellant was provided with legal aid. The prosecution led evidence examining Soniben, the first informant, Dinaben, widow of the deceased and Dilip, son of the deceased, as eye-witnesses. The prosecution also examined Maltiben, an independent neighbour, who reached the spot soon after the incident. Besides other witnesses, the prosecution examined Dr. Surendra Patel and the Investigating Officer.

2.2 The Trial Court, having found sufficient evidence against the appellant, recorded conviction for offence punishable

under Section 302 of I.P.C. and sentenced the appellant to undergo imprisonment for life and imposed a fine of Rs.1000/- and, in default to make the payment of fine, he was ordered to undergo simple imprisonment for one month. The Trial Court also convicted the appellant for offence punishable under Section 135 of the Bombay Police Act and sentenced him to undergo simple imprisonment for one month and ordered that the sentences should run concurrently.

2.3 Aggrieved by the said judgment and order of conviction and sentence, present appeal is preferred.

3. Learned Advocate, Ms. Sagar, for the appellant has taken us through the record and proceedings. She has read the evidence of eye-witnesses, Soniben, Dinaben and Dilipbhai and submitted that the prosecution has examined only interested witnesses. She submitted that the medical evidence indicates that there are more injuries than one, whereas the eye-witnesses speak of only one injury having been caused by the appellant to the deceased. The medical evidence and the evidence of the eye-

witnesses do not concur with each other and, therefore, the prosecution case ought not to have been accepted by the Trial Court. Learned Advocate also submitted that there is discrepancy about the place of incident. Lastly, it was submitted that, even as per the charge, the appellant got provoked and the incident has occurred. Only one injury was caused and, therefore, there was no intention on the part of the appellant to cause murder of the deceased. She, therefore, submitted that, even if the Court comes to a conclusion that the appellant is involved in the incident, he may be given benefit of Exception 1. to Section 300 of I.P.C. Learned Advocate, Ms. Sagar, submitted that, considering the background of the appellant, minimum punishment may be imposed. She submitted that the appeal may be allowed.

4. Learned Additional Public Prosecutor, Mr. Prachchhak, has opposed this appeal. According to him, the version of the eye-witnesses is consistent. He submitted that the incident has occurred in the late evening in a village and there could not be presence of many independent eye-witnesses. The prosecution has, however, examined Maltiben, who is a neighbour and she has

supported the prosecution case. Mr. Prachchhak submitted that the case of the appellant cannot fall in any of the exceptions to Section 300 of I.P.C. The appellant, on simply being asked as to what dispute did he have with the wife of the deceased, went home and brought a knife and inflicted the injury. No provocation was given by the deceased and, therefore, there was no need for him to go to his home, bring the knife and cause injury. As regards the submission that there was no intention, Mr. Prachchhak submitted that the very fact that the appellant went home and brought the knife and inflicted the injury on neck of the deceased is sufficient to indicate his intention. The Trial Court has, therefore, rightly convicted the appellant for the offence of murder.

5. We have considered rival side contentions in light of the evidence. Soniben Radatiya, who is the first informant, is examined at Exh.14. She is the mother of the deceased. She was standing with the deceased along with other family members when the incident occurred. She says that the appellant had quarrelled with Dina earlier and, therefore, when the deceased came, he was informed about the same. The deceased inquired of the appellant

about the incident. In response thereto, the appellant came out with a knife and inflicted injury on neck of the deceased. Deceased-Ramanbhai ran thereafter and fell down and died on-the-spot. The appellant ran away with the knife. The neighbours gathered. The witness is cross-examined. She states that when the incident occurred, it was a dark night. She denies the suggestion that her vision is affected. She denies the suggestion that she has developed cataract. She also denies the suggestion that deceased-Raman sustained injury because of Bamboo stumps in the field.

5.1 Witness-Dinaben, widow of the deceased-Raman is examined at Exh.15. She also gives the same version as that of Soniben. She has also been cross-examined and, during cross-examination, it emerges that the accused-appellant had a knife in his right hand and inflicted the injury by moving his hand downwardly.

5.2 The third witness-Dilip alias Dilesh, son of the decesased, is examined at Exh.16. He was, at the relevant time, aged 17 years. He also gives similar version of the incident and

implicates the appellant of having given knife blow on the neck of the deceased. He admits during cross-examination that, there were no street lights at the time of the incident. He denies the suggestion that his father was not murdered by giving knife blow.

5.3 Witness-Maltiben Fuljibhai Gamit is examined at Exh.17 and she says that when the incident occurred, she was at her home. Deceased-Raman and the appellant were quarrelling and, therefore, she went there. The appellant inflicted knife blow on the neck of the deceased. After the injury was caused, deceased-Raman ran a few steps and then fell down. He was bleeding. After causing injury, the appellant ran away with the knife. During cross-examination, she says that when she went, deceased-Raman had fallen down. Only one knife injury was caused. She denies the suggestion that the deceased sustained injuries because of the fall on bamboo stumps.

6. From the above pieces of evidence, it is clear that the witnesses give consistent version; their presence at the place of incident is natural; and they clearly implicate the appellant. Even

cross-examination also indicates that there was a quarrel between the appellant and P.W.2 a few days prior to the incident and, on being asked by the deceased as to what was the cause for dispute, the appellant has caused knife injury to the deceased. The appellant did not have knife with him at the time of the incident, but he went home and brought the knife. Injury is caused by giving forceful blow on vital part like neck, as a result of which his right common carotid artery was cut through, resulting into his death due to hypovolemic shock and brain ischaemia due to massive haemorrhage.

7. Involvement of the appellant in the incident, therefore, is proved. The injury was sufficient in ordinary course of nature to cause death. The appellant has caused this injury by bringing knife from his home and, therefore, it is not possible to accept the contention that there was no intention on the part of the appellant to commit murder of the deceased. It is also not possible to accept the contention that the case would fall in exception No.1 to Section 300 of I.P.C. When a quarrel occurs between a person and wife of another person and when the husband of the lady simply inquires

of the first person about the cause of quarrel, he cannot be said to have caused grave provocation to the first person and, therefore, the second contention also cannot be accepted.

7.1 So far as the contention regarding presence of more injuries on person of the deceased as compared to the version of the eye-witnesses about only one injury caused by the appellant, we noticed that it has come on record that there were bamboo stumps standing at the place where the deceased fell down after the injury. The injuries are simple and abrasion like, which could have been caused with the bamboo stumps in the field. None of the injuries other than injury No.1 is significant and, therefore, it is not possible to doubt the version given by the eye-witnesses.

8. The incident occurred at about 22 hours, i.e. 10 'o clock at night, in a small village, near the house of the parties. Obviously, presence of relatives is natural so also the absence of other independent witnesses. The prosecution, however, examined Maltiben, a neighbour, who has reached the scene soon after the incident, if not when the incident occurred. She corroborates the

version of the eye-witnesses. Under the circumstances, the prosecution case cannot be doubted on account of alleged non-examination of independent witnesses.

9. So far as conviction under Section 135 of the Bombay Police Act is concerned, notification is produced at Exh.21. The appellant is found to have been armed with a knife, which would be covered by that notification and, therefore, conviction under Section 135 of the Bombay Police Act is also justified.

10. We do not find any substance in any of the contentions raised before us. The Trial Court has considered all relevant aspects; has properly appreciated the evidence; and has rightly and justly recorded the conviction. Under the circumstances, the appeal must fail. The appeal stands dismissed. Judgment and order of the Trial Court recording conviction and sentence is hereby confirmed.

[A. L. DAVE, J.]

[BANKIM.N.MEHTA, J.]

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